

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - Room 7008  
Cincinnati, Ohio 45201

Date: FEB 26 2003

Employer Identification Number:

Person to Contact - ID#

Contact Telephone Numbers:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

We considered whether you might qualify for exemption under other sections of the Code. Specifically, we considered whether you might be better suited for exemption as a social club under section 501(c)(7) if you could meet certain special requirements of that section. However, you stated that you only wished to be considered under section 501(c)(3).

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

Name: [REDACTED]

Page 2

FIN: [REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

*W. J. Turner*

Director, Exempt Organizations

Enclosures (3)

ENCLOSURE I

FACTS

You were incorporated [REDACTED] Your Articles of Incorporation state the following purposes: "(a) To organize and unite members and other persons of good will for the purpose of promoting educational, charitable and social activities which will further the interests of community members; (b) To conduct a variety of community programs aimed at facilitating greater educational and cultural awareness in the community; (c) To work with and support community youth through the recognition of scholastic and artistic achievement and; (d) To provide outreach services to community members in need of support and direction."

The introduction to your Bylaws states, [REDACTED] you must recommit yourselves to the constant struggle [REDACTED] Later the introduction to the Bylaws states, "As your great union evolves into an [REDACTED] take a role in shaping the vision and impacting the future of what will surely be an organization better equipped to being about social goals of [REDACTED]"

Your membership is limited to all active union members. These members receive various monetary benefits.

Your activities are:

- Family Appreciation [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

You estimated the relative size of your activities as follows: the [REDACTED] City [REDACTED], 10 percent, the Mentoring program, no percentage given, [REDACTED] twenty-five percent, Family [REDACTED], twenty-five percent, and [REDACTED] fifty percent. Although your estimated percentages add up to slightly more than 100%, this does provide an indication of the relative size of your activities.

Your income is derived from membership fees and gross receipts generated from your activities.

Your expenses are attributable primarily to your social activities. Your expenses for 1999 through 2001 were as follows:

1999

[REDACTED] \$200  
[REDACTED] \$5664  
[REDACTED] \$6870  
[REDACTED] \$2985

2000

[REDACTED] \$250  
[REDACTED] \$3475  
[REDACTED] \$7924  
[REDACTED] \$200

2001

[REDACTED] \$380  
[REDACTED] \$2523  
[REDACTED] \$8154

You also distribute funds for member benefits. This includes:

1. Any member who is sick for two weeks receives a basket of fruit or flowers.
2. Any member who is hospitalized for one week or more receives a basket of fruit or flowers.
3. Any member who has a death in their immediately family receives a check for \$100.00 and flowers.

You also pay scholarships. There are no limitations or restrictions on the class of individuals who are eligible. The approximate number of eligible individuals is 200 even though there are no limitations or restrictions on eligible individuals as long as they are active members. But there is a limited amount of eligible funds to each individual because of your financial structure at this time. The number 200 was determined by your Board members because you estimated there would be a large response for the scholarship fund. This would be the cut off number. In 1999 you distributed \$3000 in scholarship funds, and you spent \$6870 on the [REDACTED] In 2000 you distributed \$1500 in scholarships and spent \$7924 on the [REDACTED] In 2001 you distributed \$1000 in scholarships and spent \$8154 on the [REDACTED]

#### LAW

Section 501(c)(7) of the Code provides exemption for clubs organized and operated for the social and recreational enjoyment of members. Contributions to a section 501(c)(7) organization are not deductible under section 170.

Name: [REDACTED]

Page 5

FIN: [REDACTED]

Section 501(c)(5) of the Code provides exemption for unions and other types of labor organizations. Contributions to section 501(c)(5) organizations are not deductible under section 170.

Section 501(c)(3) of the Code provides exemption for Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Contributions to a section 501(c)(3) organization are deductible under section 170.

The relevant sections of the Tax Regulations are as follows:

1.501(c)(3)-1

In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

1.501(c)(3)-1(b)(1)(iii)

An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3)...

1.501(c)(3)-1(c)(1)

An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose...

Name: [REDACTED]

PIN: [REDACTED]

1.501(c)(3)-1(d)(1)(ii)

An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The relevant Revenue Rulings are as follows:

Revenue Ruling 56-403

The fact that a foundation's scholarships were limited to a particular group did not preclude exemption as an educational organization inasmuch as there was no specific designation of persons eligible for scholarships and the purposes of the foundation were not so personal, private, or selfish in nature as to lack the elements of public usefulness and benefit required of organizations qualifying for exemption under section 501(c)(3) of the Code.

Revenue Ruling 55-495

An association of members of the same faith that operated a loan fund for members, provided payments of sickness, accident, and death benefits and made donations to charity, was not exempt as a fraternal society operating under the lodge system, but was exempt under IRC 501(c)(4) as an organization operated exclusively for the promotion of social welfare.

Revenue Ruling Rev. Rul. 63-190

An organization(not operated under the lodge system) which maintained a social club for members and also provided sick and death benefits for members and their beneficiaries, did not qualify for exemption from Federal income tax either as a social club under IRC 501(c)(7), a civic league under IRC 501(c)(4), or a fraternal beneficiary society under IRC 501(c)(8).

Revenue Ruling 66-59

An organization or employees whose purpose was to pay lump sum retirement benefits to its eligible members or death benefits to their survivors did not qualify for exemption under IRC 501(c)(4) as a local association of employees, since its earnings are not devoted exclusively to charitable, educational, or recreational purposes.

Revenue Procedure 86-43 states that presentations or literature that make substantial use of inflammatory language and express conclusions on the basis

Name: [REDACTED]  
 FIN: [REDACTED]

of strong emotional feelings rather than of objective evaluations will not be considered educational.

In BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC. v. UNITED 326 U.S. 279; 66 S. Ct. 112; 90 L. Ed. 67; 1945, exemption was denied to the organization because, "in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. It thus becomes unnecessary to determine the correctness of the educational characterization of petitioner's operations, it being apparent beyond dispute that an important, if not the primary, pursuit of petitioner's organization is to promote not only an ethical but also a profitable business community. The exemption is therefore unavailable to petitioner."

In Beth-El Ministries, Inc., Plaintiff v. United States of America, Defendant. C.A. No. 79-0294, the court determined the members of the taxpayer benefited in the form of food, clothing, shelter, medical care, recreational facilities and educational services from the taxpayer. Accordingly, it held private benefits inured to the members, and that even if the benefit inured was small it was still impermissible. Therefore, the court concluded the taxpayer failed to meet its burden to show that no part of its net earnings inured to the benefit of any of its members, and the commissioner's decision was supported by the record.

#### Application

You do not meet Regulation 1.501(c)(3)-1 because by the percentages supplied by you, as well as from a review of your expenses, it is evident that you are not operated exclusively for a section 501(c)(3) purpose.

You do not meet Regulation 1.501(c)(3)-1(b)(1)(iii) because the Articles expressly empower you to carry on social activities. Social activities are not furthering any section 501(c)(3) purpose.

You are similar to the Better Business Bureau in BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC. v. UNITED 326 U.S. 279; 66 S. Ct. 112; 90 L. Ed. 67; 1945 because you have substantial non-exempt purposes.

You are distinguished from the organization in Revenue Ruling 56-403 because you could not show that there was no specific designation of persons eligible for scholarships or that the purposes of the scholarship were not personal or private in nature.

You are similar to the organizations described in Revenue Rulings, 55-495, 63-190, and 66-59. All three of these organizations offered benefits to members, including death benefits. These organizations were denied section 501(c)(7), 501(c)(4), and 501(c)(8) status. It can therefore be reasonably

Name: [REDACTED]  
FIN: [REDACTED]

concluded that none of these organizations would qualify for section 501(c)(3) status either.

You do not meet Regulation 1.501(c)(3)-1(d)(1)(ii) because you were formed to provide specific benefits including scholarships, Atlantic City Trips, monetary gifts, etc. to your members.

Additionally, you are similar to Beth-El Ministries, Inc. because various benefits are available for your members only.

The language used in your Bylaws could be characterized as unacceptable advocacy under Revenue Procedure 86-43. While this is a small part of your overall purposes and activities, this would nevertheless support the denial of exempt status under section 501(c)(3) when viewed in conjunction with all of the other reasons mentioned above as to why you do not qualify.

#### Taxpayers Position

You explained that you understand and recognize the many different tax laws and that you are not a social club but rather an organization whose goals are to provide services for many different union members and other people. You stated that it has become very difficult for you to provide services and operate only with finances from membership dues and fundraisers. You also stated that becoming a section 501(c)(3) organization would allow you to seek donations from corporations, which would allow you to expand your services.

You stated that your activities further your exempt purpose because you would like to award the scholarship recipients with computers and if you were exempt you could request such donations. Additionally exempt status under section 501(c)(3) would help further your other activities because you could seek donations.

You explained that there are no limitations or restrictions on who may apply for the scholarships as long as they are active union members. You also explained that 200 would be the maximum amount of applications accepted. If there are no limitations or restrictions on who may apply for scholarships, there should not be a limit on who may apply for scholarships.

You stated that the [REDACTED] is a fund raising activity, that each individual pays \$30.00 for the trip, that the value of the trip is \$35.00, and that the individual is refunded \$8.00 in spending money.

You explained that the introduction to the Bylaws was forwarded in error with the application and that it merely explained what you are about and provided some of your rules and regulations.



Name: [REDACTED]  
PIN: [REDACTED]

#### Rebuttal

The need to seek deductible contributions is not a valid reason for granting tax exempt status under section 501(c)(3).

You still have not demonstrated that you benefits are restricted to a charitable class of recipients under section 501(c)(3).

The Atlantic City trips cannot be viewed as fundraisers vs. social activities because the cost of the trips appears to exceed your receipts.

The language problem in you bylaws has not been removed. Therefore, this remains an issue, albeit not as significant as the other issues supporting denial of exemption under section 501(c)(3).

#### Conclusion

You have a mixture of various purposes and activities. Your social activities would be more appropriate for section 501(c)(7) than 501(c)(3). However, the payment of death benefits and possibly the scholarships would have to be eliminated to qualify for 501(c)(7), and you would have to meet restrictions on the level of non-member income.

The language of your bylaws and possibly the provision of death benefits are more appropriate for a union or labor organization under section 501(c)(5) than for a charitable and educational organization under 501(c)(3). However, you do not perform collective bargaining, represent members' grievances or have other typical activities of a union or labor organization.

Your scholarship activity could qualify for section 501(c)(3) if that were your sole activity and if you could document that you selected a reasonable number of recipients on the basis of need and merit. However, the scholarships are not based on need and merit, and even if they were, the other non-qualifying activities such as the death benefits and social activities would still prohibit exempt status under section 501(c)(3).

Form 6018  
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service  
Consent to Proposed Adverse Action  
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

FEB 26 2003

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption.
- ☐ Revocation of exemption, effective.
- ☐ Modification of exemption from section 501(c)( ) to section 501(c)( ), effective
- ☐ Classification as a private foundation described in section 509(a), effective
- ☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for
- ☐ Classification as an organization described in section 509(a)( ), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date